No. 98664-9

SUPREME COURT OF THE STATE OF WASHINGTON

LONE PINE APARTMENTS, LLC; TARGA REAL ESTATE SERVICES, INC.,

Petitioner,

v.

LUCY CELES,

Respondent.

AMICUS CURIAE MEMORANDUM BRIEF ON BEHALF OF LANDLORD AND TENANT ATTORNEY DREW

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TABLE OF CONTENTS

1. Issues of Concern to Amicus Curiae.....1
2. Identity of Amicus.....1
3. Statement of the Case.....1
4. Argument.....2
5. Conclusion.....6

TABLE OF AUTHORITIES

Cases

Celes v. Lone Pine Apartments, LLC,
No. 78788-8-I, 2020 Wash. App. LEXIS 1411
(Ct. App. May 18, 2020).....2, 4

Christen v. Lee,
113 Wn.2d 479, 780 P.2d 1307 (1989).....2, 3

Griffin v. West RS, Inc.,
97 Wn. App. 557, 984 P.2d 1070 (1999).....2

Rules

RAP 13.4(b)(4).....1

Other

How big are rent increases here? Big enough to put Tacoma at the top of one list, The News Tribune
(January 31, 2018) 5

Tacoma's housing market is now the hottest in U.S. — and Seattle knows why", The Seattle
Times, (May 24, 2019).....5

1. ISSUES OF CONCERN TO AMICUS CURIAE

Whether, under RAP 13.4(b)(4) as a matter of substantial public interest, this Court should accept review of Division I's decision imposing a broad premise liability duty of care upon a landlord *to (somehow) prevent the criminal act of arson* by a non-tenant-third-party that harmed a tenant with no relationship to him—when the landlord's only prior knowledge was that this non-tenant-third-party had told *another* non-tenant-third-party (whom it was alleged, but never shown, had committed domestic violence against his girlfriend tenant and whom allegedly had allowed visitation to the premises that "suggested" drug dealing), "I'll be back[,] I got you!"?

2. IDENTITY AND INTEREST OF AMICUS CURIAE DREW MAZZEO, LANDLORD AND TENANT ATTORNEY

Undersigned counsel is a prior small family business manager and current landlord and tenant attorney with hundreds of "mom and pop" landlord clients in the rural, less wealthy, counties of Division II. (*See* Motion to File Amicus Curiae Memorandum Brief).

3. STATEMENT OF THE CASE

Amicus Drew Mazzeo, landlord and tenant attorney, incorporates the statement of facts as set forth in Petitioner's Petition for Review.

4. ARGUMENT

"To prevail on a negligence claim, a plaintiff must establish (1) the

existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause." *Celes v. Lone Pine Apartments, LLC*, No. 78788-8-I, 2020 Wash. App. LEXIS 1411, at *5-6 (Ct. App. May 18, 2020) (citing *Griffin v. West RS, Inc.*, 97 Wn. App. 557, 984 P.2d 1070 (1999) (reversed on other grounds). The existence of a legal duty is a question of law. *Christen v. Lee*, 113 Wn.2d 479, 492, 780 P.2d 1307, 1313 (1989).

At common law and as a general rule, "a private person does not have a duty to protect others from the criminal acts of third parties." *Celes*, No. 78788-8-I, 2020 Wash. App. LEXIS 1411, at *5-6. "An exception to this rule applies when a special relationship exists between the defendant and the victim." *Id*.

"One of those special relationships exists between a landlord and a tenant." *Id*. This "special relationship" is akin to the relationship "between a business and its invitee[s] that gives rise to a duty of the business to protect the invitee against foreseeable criminal acts of third persons." *Griffin v. W. Rs*, 97 Wn. App. 557, 564-65, 984 P.2d 1070, 1074 (1999). On the other hand, this Court "has held that landowners have no generalized duty to protect passersby from criminal behavior on the landowners' premise." *Griffin*, 97 Wn. App. at 563.

While "[f]oreseeability is normally an issue for the jury . . it will be decided as a matter of law where reasonable minds cannot differ." *Christen*

v. Lee, 113 Wn.2d 479, 492, 780 P.2d 1307, 1313 (1989). Stated differently, an "act is not foreseeable if it is so highly extraordinary or improbable as to be wholly beyond the range of expectability." *Id.*

Here, the trial court correctly held the issue of foreseeability, as applied to the admissible evidence, was an "issue of law" for the court to decide as a matter of law. (CP at 1073). Reasonable minds could not differ that the landlord could not foresee that the everyday common occurrence of numerous visitors to the property (supposedly suggesting drug activity) and unconfirmed incidents of domestic violence by non-tenant-third-party #1 (who had a criminal history of drug related offences) would lead to yet another non-tenant-third-party #2 attempting to burndown the entire apartment complex (harming an unrelated tenant, the plaintiff is this suit) after a verbal altercation between the two non-tenant-third-parties. This extremely attenuated sequence of events, even if landlord took the above unconfirmed allegations about the non-tenant-third-parties as true, is "so highly extraordinary or improbable as to be wholly beyond the range of expectability." *Christen,* 113 Wn.2d at 492.

Landlords are not police officers or detectives. They cannot read the minds of third parties and have no legal duty to do so. They cannot breach their tenants' quiet right to enjoyment of the property. They cannot deny guests from visiting their tenants without verified reasons and material,

provable, cause. They cannot snoop on or harass tenants based on mere speculative, hearsay, accusation and complaints. Landlords are not prison guards and tenants have rights to privacy.

Rather, a landlord's duty is to maintain common areas as reasonably safe. Their duty is to reasonably foresee actions that cause harm to their tenants. That does not mean putting the entire premises on 24/7 lock down, as would have been needed to prevent the criminal act of arson in this case. Had the facts been different, and the arsonist broken a window and thrown a "Molotov Cocktail" into the common area—would this landlord be subject to a duty to prevent that? How, beyond what Petitioner was already doing to reasonably secure common areas? (*See* CP at 25, 91) (arsonist cut through and hopped the fence to access the property).

Division I's decision opens the flood gate by holding that "highly extraordinary or improbable" criminal activity is foreseeable under the most attenuated of circumstances. As the trial court ruled, Petitioners were not on notice of any arson or similar type of foreseeable criminal activity. (CP at 1075-78). That ruling was entirely proper as a matter of law. Division I improperly held that "[b]ecause Cele's legal 'arument was on landowner's past experience," the trial court did not conduct the proper legal analysis. *Celes*, No. 78788-8-I, 2020 Wash. App. LEXIS 1411, at *6-7. The error that Division 1 made is broadly construing the special relationship between a

landlord and tenant as essentially a strict liability standard. It is not. Nor is the special relationship akin to other situations where one party takes custody or care of another. The landlord-tenant relationship is an arms-length relationship with the simple duty to keeping common areas reasonably safe from foreseeable acts. Arson, under these facts, was not a foreseeable act as a matter of law.

Last, as a matter public policy, Division I's decision will unreasonably and unnecessarily raise the cost of already *extremely* expensive housing[1] in Washington State by—contrary to sound precedent—mandating landlords protect against any and all events on their property no matter how unpredictable or remote the possibility. "Mom and pop" landlords operating on razor thin margins, often unable to make their own mortgage payments, will sell their properties and tenants will have no place to live.[2]

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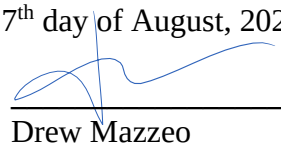
[1] *E.g.*, *How big are rent increases here? Big enough to put Tacoma at the top of one list*, The News Tribune (January 31, 2018) (available at https://www.thenewstribune.com/news/business/real-estate-news/article197488339.html).

[2] The rate of residential landlord clients—many of which "mom and pops"—selling their properties and taking rental housing off the market since July of 2019 (since changes to the residential landlord tenant act, allowing significant delays to failure to pay evictions) has skyrocketed. COVID proclamations have dramatically increased this trend. Division 1's ruling will do the same because it raises the cost of doing business in the same sort of way; landlords must choose between raising rents, making next to no money, exposing themselves to unpredictable liability, or getting out the business altogether. The latter is most common consult undersigned sees from residential "mom and pop" landlords today. His common ethically based recommendation (even though it harms undersigned's livelihood) is that unless a landlord has significant capital reserves and is renting properties without mortgages—selling their rental properties and taking them off the rental market—

5. CONCLUSION

For the above stated reasons, undersigned counsel respectfully requests this Court grant Petitioner's Petition for Review. The error of law committed by Division I, the livelihood of "mom and pop" landlords, and the availability of affordable housing are substantial issues of public importance meritorious of review.

Respectfully submitted this 17th day of August, 2020,



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is the wisest course of action. *See e.g.*, "*Tacoma's housing market is now the hottest in U.S. — and Seattle knows why*", The Seattle Times, (May 24, 2019) (available at https://www.seattletimes.com/business/real-estate/tacomas-housing-market-is-now-the-hottest-in-u-s-and-seattle-knows-why/?utm_source=email&utm_medium=email&utm_campaign=article_inset_1.1).

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 17th day of August, 2020, I caused a true and correct copy of the foregoing document, "AMICUS MOTION" to be delivered to the following counsel of record as indicated:

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